HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.13123 of 2000

Date: 22.08.2007

Between:

M/s Ayyappaswamy Traders, Tadipatri and others

....Petitioners

and

The Assessing Authority and Secretary,
Agricultural Market Committee,
Tadipatri, Anantapur District

....Respondent

HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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O R D E R:

The petitioners are traders in edible oils. As part of their activity, they purchased groundnut and sunflower seeds from various sources. Since the seeds happen to be agricultural produce, market fee under the provisions of Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (for short 'the Act') is to be paid to the concerned market committee. All the petitioners are situated in the area of operation of the agricultural market committee, Tadipatri-the respondent herein.

For the years 1997-98, the petitioners submitted returns. They claimed exemption on the strength of certain export permits. The respondent passed individual orders of assessment dated 12.6.2000. While all other items pointed out in the returns were accepted, the respondent rejected the claim of the petitioners on the basis of export permits. It was observed that export permits are not genuine. On this basis, the respondent required the petitioners to pay the disputed market fee. The petitioners feel aggrieved by the orders of assessment. They contend that the adverse finding against them was recorded without hearing and giving an opportunity, as contemplated under Section 12-B (1) of the Act.

The respondent filed counter affidavit raising an objection as to

the very maintainability of the writ petition. The manner in which the finding as to the genuineness of the export permits was arrived at is explained in detail.

Sri O. Manoher Reddy, the learned counsel for the petitioners, submits that not only as a requirement under the principles of natural justice, but also as compliance with sub-section (1) of Section 12-B of the Act, the respondent was under obligation to issue notice to the petitioners before any adverse finding was recorded. It is submitted that the impugned orders are liable to be set aside.

The learned Standing Counsel for the respondent, on the other hand, submits that under Section 12-E of the Act, an appeal is provided to aggrieved assessees. He further contends that the findings were recorded after due verification of the records and no interference with the impugned proceedings is warranted.

Section 12-B of the Act prescribes the procedure to be followed by the authorities while processing the returns filed by the licence holders. Sub-section (1) thereof reads as under:

> **"Assessment of Market Fees**:-
>
> (1) If the assessing authority is satisfied that any return submitted under Section 12-A is correct and complete, it shall assess the amount of market fees payable by the trader on the basis thereof; but if the return appears to it to be incorrect or incomplete, it shall, after giving the trader an opportunity of providing the correctness and completeness of the returns submitted by him and after making such inquiry as it considers necessary, assess to the best of its judgment the amount of market fees due from the trader. An assessment under this section shall however, be made only within a period of three years from the expiry of the year to which the assessment relates."

From this, it is evident that an order of assessment can straightaway be passed in case the facts and figures mentioned by the assessee in the return are found to be correct. Where, however, the assessing authority is of the view that the facts and figures are either incorrect or incomplete, it shall give an opportunity to the trader to

explain the relevant facts.

In the instant case, the petitioners submitted the returns by stating several facts. One important aspect namely; the exemption claimed on the strength of export permits was not accepted by the respondent. The respondent was under obligation to issue notice to the petitioners before it recorded a finding to their adverse interest. Since such a course was not accepted, the impugned orders of assessment, insofar as they relate to the denial of exemption on the basis of export permits, are set aside.

To that limited extent, the impugned proceedings dated 12.6.2000 are set aside and remanded to the respondent for fresh consideration and disposal. The respondent shall give notice to the petitioners, pointing out the basis on which he suspects the genuineness of the export permits.

The writ petition is allowed in part as above. There shall be no order as to costs.

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L.NARASIMHA REDDY, J

22nd August, 2007.
cvm